

Docket No. 23915-7316

- 84
86. The method of claim 64, further comprising forming a stromal tunnel below the epithelium from the initial incision prior to introducing the implant into the cornea.
- 85
87. The method of claim 66, wherein forming a stromal tunnel comprises introducing a penetrating member into the cornea. --

REMARKS

This Preliminary Amendment and Request to Declare Interference is being filed prior to a first office action in the subject application. Original claims 1 to 5, 11 to 13, 22 to 35 and 41 to 49 have been cancelled. New claims 50-67 have been added and are the only claims pending.

REQUEST FOR INTERFERENCE

It is requested that an interference be declared between the subject application and Sawusch's U.S. Patent No. 6,171,336 B1 ("the '336 patent") issued on January 9, 2001. The subject application is a continuation of U.S. Application No. 08/993,696, filed December 18, 1997 which is a continuation-in-part of U.S. Application No. 08/662,781, filed June 7, 1996 (now abandoned), which is a continuation-in-part of U.S. Application No. 08/485,400, filed June 7, 1995 (now abandoned). Therefore, Applicants' effective filing date is June 7, 1995. The '336 patent was filed on March 25, 1997 and based on its stated priority claim, the effective filing date appears to be March 26, 1996.

Thus Applicants' effective filing date of June 7, 1995 is earlier than the effective filing date March 26, 1996 of the '336 patent.

COUNT 1

Pursuant to 37 C.F.R. § 1.607 (a) 2, Applicants present the following proposed count 1 for the interference:

Count 1. A method of altering a curvature of a cornea to correct a refractive error, comprising:
making an initial incision through a corneal epithelium or limbus;
introducing an intrastromal implant radially into the cornea through the initial incision and advancing the implant through a corneal stroma without entering a central optical zone, the implant being shaped to substantially correct the refractive error.

Proposed count 1 is claim 1 of the '336 patent. At least claims 1, 2, 3, 7, 8, 9, 10, 11, 12, 15, 16, 17, 19, 20 and 25 of the '336 patent and Applicants' claims 50-63 and 65 (which have been copied from the '336 patent) correspond to the proposed count 1.

The terms of application claims corresponding to the proposed count are supported in Applicants' original specification at least as follows:

The '336 Patent Claim	Pending Claim	Supporting Language in U.S. Application No. 08/485,400 (page and line number)
1	50	P. 4 L. 1-7 ; P. 9 L. 19-24 ; P. 22 L. 27-30 ; Fig. 23-24
2	51	P. 4 L. 1-7 ; P. 21 L. 15-25
3	52	P. 4 L. 1-7 ; P. 21 L. 15-25
7	53	P. 9 L. 23-30 ; P. 10 L. 1-2 ; P. 16 L. 21-25 ; Fig. 18
8	54	P. 9 L. 22-26 ; P. 10 L. 11-12
9	55	P. 3 L. 22-28
10	56	P. 3 L. 22-28 ; P. 10 L. 28-30 ; Fig. 3A-C
11	57	P. 3 L. 22-28 ; P. 10 L. 29-30 ; P. 11 L. 1-4 ; Fig. 3B-C
12	58	P. 4 L. 29-30 ; P. 5 L. 1-2 ; P. 9 L. 30 ; P. 5 L. 1-2 ; P. 16 L. 21-25 ; Fig. 18
15	59	P. 3 L. 22-28
16	60	P. 19 L. 21-23
17	61	P. 4 L. 20-27 ; P. 16 L. 21-25
19	62	P. 11 L. 17-23
20	63	P. 11 L. 17-23 ; P. 13 L. 7-11 ; P. 15 L. 17-19 ; Fig. 11, 12
25	65	P. 19 L. 24-30 ; P. 20 L. 1-2

COUNT 2

Pursuant to 37 C.F.R. § 1.607 (a) 2, Applicants present the following proposed count 2 for the interference:

Count 2. A method of altering a curvature of a cornea to correct a refractive error in a subject, comprising:
 providing an elongated implant, wherein the implant has a pre-selected curvature or shape, along its longitudinal axis, designed to offset a refractive error in a subject;
 making an initial incision in a periphery of limbus of the cornea;
 inserting the implant into a stroma of the cornea through the initial incision, without entering a central optical zone or disrupting the epithelium at other than the initial incision, wherein a greatest width of the implant substantially conforms to the dimensions of the initial incision as the implant is introduced along its longitudinal axis radially into the cornea.

Proposed count 2 is claim 22 of the '336 patent. At least claims 22, 27 and 28 of the '336 patent and Applicants' claims 64, 66 and 67 (which have been copied from the '336 patent) correspond to the proposed count 2.

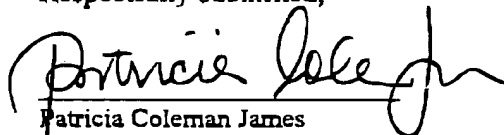
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The terms of application claims corresponding to the proposed count are supported in Applicants' specification (as originally filed) at least as follows:

The ' 336 Patent Claim	Pending Claim	Supporting Language in U.S. Application No. 08/485,400
22	64	P.21 L. 18-25 ; P. 11 L. 17-33
27	66	P. 21 L. 15-25 ; Fig. 21
28	67	P. 21 L. 15-25 ; Fig. 21

PCJ
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